

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 578

Introduced by Assembly Member Leno

February 18, 2003

An act to amend ~~Section 27361.4 of, and to add Section 27279.5 to Sections 27297.6 and 27361.4 of, to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of, and to repeal Sections 27279.4 and 27398 of,~~ the Government Code, relating to county recorders.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Leno. County recorders: electronic recording.

(1) Existing law generally ~~provides~~ *specifies* that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

~~This bill would authorize the county recorder to develop a system for accepting records for recording electronically. The bill would require a county developing an electronic recording system to obtain a report addressing the safety and security considerations of the proposed system from a qualifying computer security firm or consultant, as specified. The bill would also authorize an unspecified agency to adopt certain general standards for electronic recording systems and would require that unspecified agency to report to the Legislature on counties' electronic recording systems, as specified.~~

This bill would enact the Electronic Recording Delivery System Act of 2003, to authorize a county recorder to establish an electronic

recording delivery system for the recording of digitized electronic records affecting the right, title, or interest in real property, subject to specified conditions, including regulation and oversight by the Attorney General. It would authorize the Attorney General to charge a fee directly to a vendor seeking approval of software and other services as part of an electronic recording delivery system.

This bill would, until January 1, 2011, authorize up to 12 counties, subject to approval by their respective boards of supervisors, to participate in an electronic recording pilot project utilizing digital electronic records to record real property documents, subject to specified criteria. The Attorney General would be required to evaluate the pilot projects and report to both houses of the Legislature on or before June 30, 2007.

(2) Existing law authorizes the board of supervisors of any county to provide for specified fees for the filing and indexing of documents with the county recorder.

This bill would authorize the board of supervisors of any county to provide for an additional fee of up to \$1 per document for recording of a document electronically. It would authorize charging this fee for ~~an~~ *unspecified* a period of up to 5 years after a county implements an electronic recording system.

(3) Existing law requires the Attorney General to appoint an Electronic Recordation Task Force, consisting of specified representatives, to meet on a regular basis to address the technical, legal, security, and economic issues associated with electronic recordation, and recommendations on specified issues.

This bill would repeal this provision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 27279.5 is added to the Government~~
 2 ~~Code, to read:~~
 3 ~~27279.5. (a) The county recorder may develop an electronic~~
 4 ~~recording system in accordance with this section. In establishing~~
 5 ~~this system, a county recorder shall perform due diligence to~~
 6 ~~ensure the safety and security of the proposed system. Any system~~
 7 ~~developed pursuant to this section shall provide for proper offsite~~
 8 ~~archival procedures in accordance with guidelines developed~~

1 pursuant to Section 12236. Nothing in this section shall preclude
2 the application of Section 27203.

3 (b) The recorder shall be guided in the exercise of his or her
4 discretion pursuant to subdivision (a) by the following factors:

5 (1) Whether accepting electronically transmitted records is in
6 the best interest of the county and the public.

7 (2) Whether persons requesting access to the program for the
8 purpose of electronically recording documents have effective
9 security precautions in place to address potential fraud and forgery
10 of documents during the electronic recording process.

11 (3) Whether the volume and quality of electronic records
12 submitted will be sufficient to warrant electronic recordation.

13 (4) Whether a written agreement exists between the county and
14 persons requesting access to the program in order to define the
15 rights and responsibilities of each of them.

16 (5) Whether factors of cost, capacity, or security require the
17 limitation of the provision of access to persons requesting to
18 participate, based upon business reasons for recording documents,
19 scope of authority under a license, if any, and volume of
20 documents recorded in previous years.

21 (c) The _____ may adopt standards for the review and approval
22 by county recorders of systems and processes to conduct electronic
23 recording of digitized images or electronic records of recordable
24 instruments. The standards shall include general guidelines
25 relating to security, capacity, reliability, and uniformity.

26 (d) Before developing an electronic recording system, a county
27 or county recorder shall consult with, and obtain a report from, a
28 computer security firm or consultant selected from a list of firms
29 or consultants approved by the _____. The report of the consultant
30 shall be transmitted to _____ and shall include, but not be limited
31 to, all of the following considerations:

32 (1) Safety and security of the proposed system.

33 (2) Results of testing of the system's protections against fraud
34 or intrusion.

35 (3) Recommendations of any additional precautions or
36 provisions needed to ensure that the proposed system is as secure
37 as the existing paper-based system, and protects the integrity of the
38 recorder's records.

39 (4) Recommendations from the district attorney as to the safety
40 and security of the proposed system.

~~(e) If a district attorney or county counsel for a county developing an electronic recording system or the Attorney General reasonably believes that a system pursuant to this section has been compromised by fraud or intrusion, he or she shall immediately take the necessary steps to alert the county recorder to guard against any compromise of the system, which may result in the suspension of electronic recording.~~

~~(f) Upon request of the county recorder, the Department of Justice shall conduct a criminal background check of a requester or a private contractor submitting an electronic recording system for review and approval. The cost of the background check may be charged to the private contractor or requester.~~

~~(g) For the purposes of this section, security testing means an independent security audit, including, but not limited to, the use of computer security experts to attempt to penetrate a system for recording digitized images or electronic recording for the purposes of testing the security of the system. The contractor shall perform an independent security audit prior to and after beginning operation of an electronic recording system, with results to be provided to the county recorder and the district attorney for the respective counties.~~

~~(h) No later than two years after beginning operation of an electronic recording system, counties continuing to implement an electronic recording system pursuant to this section shall obtain a report evaluating the system from a firm or consultant with expertise in computer security, selected from a list of those firms or consultants approved by the ____.~~

~~(i) Periodically, and in no event later than January 31, 2007, the ____ shall compile all of the reports received pursuant to subdivision (d) and shall report to the Legislature on the results of the county systems. The report shall include information regarding the volume of instruments recorded, costs savings or cost increases, and changes in the number and effect, if any, of the incidence of fraudulent documents.~~

~~(j) This authority is in addition to any other authority or obligation under California or federal law.~~

~~SECTION 1. Section 27279.4 of the Government Code is repealed.~~

~~27279.4.—(a) The California Attorney General shall appoint an Electronic Recordation Task Force consisting of voluntary~~

1 ~~representatives from governmental agencies and industry groups~~
2 ~~specified in subdivision (b) who shall meet on a regular basis to~~
3 ~~address the technical, legal, security and economic issues~~
4 ~~associated with electronic recordation. The task force shall make~~
5 ~~recommendations regarding all of the following:~~

6 ~~(1) In addition to requesters qualifying under Section 27279.2,~~
7 ~~which persons and entities should be authorized to digitize and~~
8 ~~record documents electronically after January 1, 2000, in order to~~
9 ~~limit real property fraud, forgery, and consumer risks associated~~
10 ~~with electronic recordation and provide a cost benefit to the~~
11 ~~county.~~

12 ~~(2) Guidelines for the standardization of both software and~~
13 ~~hardware used by counties to ensure maximum efficiency,~~
14 ~~cost effectiveness, and maximum use of the electronic recordation~~
15 ~~process by requesters qualifying under Sections 27279.2 and~~
16 ~~27279.3.~~

17 ~~(3) Appropriate recording fees and other assessments to cover~~
18 ~~increased costs to both county recorders and requesters.~~

19 ~~(b) The task force described in subdivision (a) shall consist of~~
20 ~~representatives from governmental and industry groups, including~~
21 ~~county recorders, county district attorneys, the Franchise Tax~~
22 ~~Board, Fannie Mae, the United States Internal Revenue Service,~~
23 ~~trustees, mortgage bankers, financial institutions, and the title~~
24 ~~insurance and real estate industries.~~

25 SEC. 2. Section 27361.4 of the Government Code is amended
26 to read:

27 27361.4. (a) The board of supervisors of any county may
28 provide for an additional fee of one dollar (\$1) for filing every
29 instrument, paper, or notice for record, in order to defray the cost
30 of converting the county recorder's document storage system to
31 micrographics. Upon completion of the conversion and payment
32 of the costs therefor, this additional fee shall no longer be imposed.

33 (b) The board of supervisors of any county may provide for an
34 additional fee, other than the fees authorized in subdivisions (a)
35 and (c), of one dollar (\$1) for filing every instrument, paper, or
36 notice for record provided that the resolution providing for the
37 additional fee establishes the days of operation of the county
38 recorder's offices as every business day except for legal holidays
39 and those holidays designated as judicial holidays pursuant to
40 Section 135 of the Code of Civil Procedure.

(c) The board of supervisors of any county may provide for an additional fee, other than the fees authorized in subdivisions (a) and (b), of one dollar (\$1) for filing every instrument, paper, or notice for record provided that the resolution providing for the additional fee requires that the instrument, paper, or notice be indexed within two business days after the date of recordation.

(d) The board of supervisors of any county may provide for an additional fee, other than the fee provided for in subdivisions (a), (b), and (c), of up to one dollar (\$1) per document for recording a document electronically. This additional fee may be charged for up to ~~five~~ years after the implementation of an electronic recording system.

SEC. 3. Article 6 (commencing with Section 27390) is added to Chapter 6 of Division 2 of Title 3 of the Government Code, to read:

Article 6. Electronic Recording Delivery System Act of 2003

27390. (a) This article shall be known and may be cited as the Electronic Recording Delivery System Act of 2003.

(b) For purposes of this article, the following definitions shall apply:

(1) "Authorized staff" means either of the following:

(A) Any employee, contractor, designee, or agent of an authorized submitter to an electronic recording delivery system.

(B) Any employee, contractor, designee, or agent of a county recorder who is entrusted with access to the electronic recording delivery system.

(2) "Authorized submitter" means any of the following entities that has complied with this article, including any regulations adopted pursuant to this article, and who have contracted with a county recorder to electronically record documents:

(A) An entity, agency, branch, or instrumentality of local, state, or federal government.

(B) A licensed title insurance company as defined in Section 12340.4 or 12340.5 of the Insurance Code, or an escrow company subject to Chapter 2 (commencing with Section 17200) of Division 6 of the Financial Code.

(C) The Federal National Mortgage Association (Fannie Mae) or the Federal Home Mortgage Association (Freddie Mac).

1 (D) *An institutional investor as defined in subdivision (i) of*
2 *Section 5003 of the Financial Code.*

3 (E) *Any additional submitter determined by a county recorder*
4 *to be eligible pursuant to Section 27391.*

5 (3) *“Computer security auditor” means accredited computer*
6 *security personnel, hired from either the public or private sector,*
7 *to perform an independent audit or review of the electronic*
8 *recording delivery system. The computer security auditor shall be*
9 *independent of the county and shall not be the same contractor*
10 *hired to establish or participate in that electronic recording*
11 *delivery system or in any other county’s electronic recording*
12 *delivery system.*

13 (4) *“Digital electronic record” means a record containing*
14 *information that is created, generated, sent, communicated,*
15 *received, or stored by electronic means, but not created in original*
16 *paper form.*

17 (5) *“Digitized electronic record” means a scanned image of the*
18 *original paper document.*

19 (6) *“Document” means an instrument or record that otherwise*
20 *meets the requirements of this article and affects the right or title*
21 *to, interest in, or possession of, real property.*

22 (7) *“Electronic” means relating to technology having*
23 *electrical, digital, magnetic, wireless, optical, electromagnetic, or*
24 *similar capabilities.*

25 (8) *“Electronic document” means a document that is created,*
26 *generated, sent, communicated, or received by electronic means.*

27 (9) *“Electronic recording delivery system” means a system to*
28 *deliver for recording, and for return to the party requesting*
29 *recording, digitized electronic records affecting the right, title, or*
30 *interest in real property.*

31 (10) *“Electronic signature” means an electronic sound,*
32 *symbol, or process attached to or logically associated with an*
33 *electronic record and executed or adopted by a person with the*
34 *intent to sign the electronic record.*

35 (11) *“Security testing” means an independent computer*
36 *security audit, including, but not limited to, the use of computer*
37 *security auditors to attempt to penetrate an electronic recording*
38 *delivery system for the purpose of testing the security of that*
39 *system. Security testing, including penetration studies, shall be*
40 *subject to regulation by the Attorney General.*

1 (12) “Source code” means a program or set of programs
2 readable and maintainable by humans, translated or interpreted
3 into a form that the electronic recording delivery system can
4 execute.

5 (13) “System certification” means issuance of a confirmation
6 letter regarding a specific electronic recording delivery system by
7 the Attorney General. The system certification shall include any
8 agreements between the Attorney General as to the operation of
9 the electronic recording delivery system, including, but not limited
10 to, the frequency of computer security audits.

11 27391. In addition to any other person or entity described in
12 paragraph (2) of subdivision (b) of Section 27390 as an authorized
13 submitter, the county recorder may in his or her discretion
14 determine other persons or entities to be authorized submitters.
15 The recorder shall be guided in the exercise of his or her discretion
16 by the following factors:

17 (a) Whether accepting electronically delivered records from
18 the person or entity is in the best interest of the county and the
19 public.

20 (b) Whether the person or entity requesting access to the
21 program for the purpose of electronically delivering documents
22 has effective security precautions in place to safeguard against
23 potential fraud and forgery of documents during the electronic
24 delivery process.

25 (c) Whether the person or entity requesting access
26 demonstrates the maintenance of sufficient financial ability to
27 indemnify losses for which it is responsible that might be suffered
28 by the county or members of the public. The recorder may in his or
29 her sole discretion consider or require net worth, maintenance of
30 insurance or bonding, access to indemnity or fidelity funds, other
31 evidences of financial ability, or any combination thereof.

32 (d) Whether the volume and quality of electronic records
33 submitted will be sufficient to warrant electronic delivery.

34 (e) Whether factors of cost, capacity, or security require the
35 limitation of the provision of access to persons requesting to
36 participate, based upon business reasons for recording
37 documents, scope of authority under a license, if any, and volume
38 of documents recorded in previous years.

39 27392. (a) A county recorder may establish an electronic
40 recording delivery system in accordance with this article.

1 (b) Any system developed pursuant to this article shall provide
2 for proper offsite archival procedures in accordance with
3 guidelines developed pursuant to Section 12236.

4 (c) Any system developed pursuant to this article shall require
5 a governing contractual relationship between the recorder and
6 each authorized submitter that includes, but need not be limited to,
7 the following components:

8 (1) A requirement that the submitter comply with this article
9 and any implementing regulations.

10 (2) Provisions governing the identification and supervision of
11 authorized staff.

12 (3) Mutually agreed upon standards of operation of the
13 electronic recording delivery system.

14 (4) Permission by the submitter for security testing.

15 (5) A provision specifying that the agreement may be
16 terminated at any time.

17 (d) Notwithstanding Section 27203, a recorder may refuse to
18 enter an agreement with an authorized submitter, or may refuse to
19 accept an electronically delivered document from an authorized
20 submitter whenever any of the following occur:

21 (1) The submitter or authorized staff has been convicted of a
22 crime related to fraud or dishonesty.

23 (2) The recorder reasonably believes that the submitter or
24 authorized staff has engaged in improper conduct relating to the
25 recording of documents.

26 (3) The recorder reasonably believes that the submitter or
27 authorized staff has violated any provision of the contractual
28 agreement required by this article.

29 (e) The county recorder may terminate access to any electronic
30 recording delivery system, or any part of a system, or may
31 terminate access of any authorized submitter, or any authorized
32 staff, at any time he or she deems it necessary to protect the public
33 interest, to protect the integrity of public records, to protect
34 homeowners or real property owners from financial harm, or in the
35 event an authorized submitter or its agents or employees violates
36 any rules or regulations established by the county recorder for
37 maintenance of the system. No cause of action or liability against
38 the county recorder or any government agency shall arise from the
39 decision of the county recorder to terminate or deny access of any
40 person to the electronic recording delivery system.

1 27393. (a) *To be eligible to establish an electronic recording*
2 *delivery system, a county or county recorder shall contract with,*
3 *and obtain a report from, a computer security auditor selected*
4 *from a list of computer security auditors approved by the Attorney*
5 *General.*

6 (b) *The Attorney General shall approve computer security*
7 *auditors on the basis of significant experience in the evaluation*
8 *and analysis of Internet security design, the conduct of security*
9 *testing procedures, and specific experience performing Internet*
10 *penetration studies.*

11 (c) *The Attorney General shall complete the approval of*
12 *security auditors within 90 days of a request from a county*
13 *recorder. The list shall be a public record. The computer security*
14 *auditor shall conduct ongoing monitoring of the electronic*
15 *recording delivery system and issue periodic reports, with the*
16 *frequency of monitoring and reporting to be determined by*
17 *regulation. The reports of the computer security auditor shall*
18 *include, but not be limited to, all of the following considerations:*

19 (1) *Safety and security of the proposed system, including the*
20 *vulnerability of the electronic recordation system to fraud or*
21 *penetration.*

22 (2) *Results of testing of the system's protections against fraud*
23 *or intrusion, including security testing and penetration studies.*

24 (3) *Recommendations of any additional precautions or*
25 *provisions needed to ensure that the proposed system is as secure*
26 *and protects the integrity of the recorder's records.*

27 (d) *Upon completion, the reports and any response to any*
28 *recommendations shall be transmitted to the board of supervisors,*
29 *the county district attorney and the Attorney General. A county*
30 *may not begin an electronic recording delivery system until*
31 *security testing, as defined in paragraph (11) of subdivision (b) of*
32 *Section 27390, has demonstrated that the system is secure and*
33 *system certification has occurred. The Attorney General shall not*
34 *approve any electronic recording delivery system, unless it fulfills*
35 *the requirements of this article and the regulations of the Attorney*
36 *General.*

37 (e) *An electronic recording delivery system shall be audited, at*
38 *least once during the first year of operation and periodically*
39 *thereafter, as set forth in regulation and in the system certification,*
40 *by a computer security auditor. The nature and scope of the audit*

1 shall conform to this article and regulations adopted pursuant to
2 this article. Audit reports shall be submitted to the Attorney
3 General, the county district attorney, and the county recorder. In
4 conducting the audit, the primary role of the computer security
5 auditor shall be to protect the public interest and ensure that
6 electronic recording delivery systems are reliable and secure.

7 (f) A computer security auditor shall have access to any aspect
8 of an electronic recording delivery system, in any form requested.
9 Auditor access shall include, but not be limited to, permission for
10 a thorough examination of source code and the associated
11 approved escrow facility, and necessary authorization and
12 assistance for a penetration study of that system.

13 (g) If the county recorder, a computer security auditor, a district
14 attorney for a county participating in the electronic recording
15 delivery system, or the Attorney General reasonably believes that
16 an electronic recording delivery system is vulnerable to fraud or
17 intrusion, the county recorder, the board of supervisors, the district
18 attorney, and the Attorney General shall be immediately notified.
19 The county recorder shall immediately take the necessary steps to
20 guard against any compromise of the electronic recording delivery
21 system, including, if necessary, the suspension of the electronic
22 recording delivery system.

23 27394. (a) In lieu of the requirements set forth in Section
24 27321, after acceptance for recording, the county recorder shall
25 electronically transmit a copy of each recorded electronic
26 document accepted under this article to the authorized submitter.
27 The authorized submitter shall be responsible for mailing either by
28 United States Postal Service or electronically a copy of the
29 recorded electronic document to the address specified in the
30 instructions for mailing upon completion of recording.

31 (b) When a signature is required to be accompanied by a
32 notary's seal or stamp, that requirement is satisfied if the electronic
33 signature of the notary contains all of the following:

34 (1) The name of the notary.

35 (2) The words "Notary Public."

36 (3) The name of the county where the bond and oath of office
37 of the notary are filed.

38 (4) The sequential identification number assigned to the
39 notary, if any.

1 (5) *The sequential identification number assigned to the*
2 *manufacturer or vendor of the notary's physical or electronic seal,*
3 *if any.*

4 (c) *In addition to, and notwithstanding Section 27361.5, a*
5 *county recorder, with approval by resolution of the board of*
6 *supervisors, may require, but need not be limited to, the following*
7 *index information on the first page or sheet of a digital or digitized*
8 *electronic document presented for recording:*

9 (1) *The parcel identifier number of the real estate.*

10 (2) *The address of the real estate, to the extent available.*

11 (3) *The name of the authorized submitter presenting the*
12 *document for recording.*

13 (4) *The name of the authorized requestor of a document for*
14 *recording.*

15 (5) *The marital, corporate, partnership, or other similar legal*
16 *status of a person who is a party to the document.*

17 (6) *The date of the document.*

18 (7) *The number of pages or sheets contained in the record,*
19 *including the first page or sheet.*

20 (8) *The transmittal information to identify the sender and*
21 *provide recording record information.*

22 27395. (a) (1) *All individuals who are entrusted with access*
23 *to the electronic recording delivery system as authorized staff, or*
24 *a computer security auditor, shall submit two 8" by 8" fingerprint*
25 *cards bearing the legible rolled and flat impressions of their*
26 *fingerprints together with a personal description, prepared by a*
27 *local public law enforcement agency, which shall transmit the card*
28 *to the Bureau of Criminal Identification and Information in the*
29 *Department of Justice. Positions subject to this subdivision shall*
30 *be determined by regulation and shall be set forth in a county's*
31 *system certification.*

32 (2) *The Attorney General may utilize an alternate system of*
33 *examining fingerprints if that system meets the same standard of*
34 *reliability and security set forth in this subdivision and is approved*
35 *and operated by the Department of Justice.*

36 (3) *The Department of Justice may forward one copy of the*
37 *applicant's fingerprint cards to the Federal Bureau of*
38 *Investigation for the purpose of obtaining any record of previous*
39 *out-of-state conviction of an applicant.*

(b) The Department of Justice shall ascertain whether an individual applicant authorized staff or an individual applicant computer security auditor has suffered a felony conviction or a misdemeanor conviction for theft, fraud, or moral turpitude, including whether the individual applicant has pending criminal charges within the State of California. No individual applicant classified as authorized staff or as a computer security auditor may be employed in the security status of having access to the electronic recording delivery system, if he or she has suffered a felony conviction or misdemeanor conviction for theft, fraud, or crimes of moral turpitude, nor may the applicant have pending criminal charges of felony violations or allegations of misdemeanor charges for theft, fraud, or crimes of moral turpitude, as detailed in the criminal history information that is reviewed by the Department of Justice. A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury for forfeiture of bail is deemed to be a conviction within the meaning of this article, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

(c) The Department of Justice shall charge a fee sufficient to cover the cost of processing the fingerprint submission and to cover the cost of the Department of Justice maintaining and storing all applicant records.

(d) Once the Department of Justice has ascertained the criminal history information of an applicant, it shall forward a written notification of criminal convictions or pending criminal charges, or both, to the division of the Office of the Attorney General charged with oversight duties regarding this article.

(e) The Attorney General shall deliver written notification of an applicant's ineligibility for access to an electronic recording delivery system to an applicant, his or her known employer, whether it be a public or private employer, to the related authorized submitter, and to the county recorder of the jurisdiction where the applicant seeks access to an electronic recording delivery system.

27396. County recorders are encouraged to experiment with notices to property owners to help them become aware of possible fraudulent or erroneous recordings against their properties.

1 27397. (a) *The Attorney General shall, in consultation with*
2 *the County Recorders Association of California and the California*
3 *District Attorneys Association, adopt regulations establishing*
4 *standards for the review and approval by county recorders of*
5 *systems and processes to conduct electronic recording and*
6 *providing for the regulatory oversight of electronic recording*
7 *delivery systems. Regulations shall be adopted pursuant to the*
8 *Administrative Procedures Act, Chapter 3.5 (commencing with*
9 *Section 11340) of Part 1 of Division 3.*

10 (b) *No electronic recording delivery system may become*
11 *operational without the approval of the Attorney General pursuant*
12 *to applicable regulations adopted pursuant to this article.*

13 (c) *The regulations shall include general guidelines relating to*
14 *security, capacity, reliability, and uniformity, and shall comply*
15 *with Section 12168.7. The regulations shall establish minimum*
16 *standards to ensure that a county recorder has the capability of*
17 *identifying security problems that may make the system susceptible*
18 *to fraud or any attempt to tamper with official records, and shall*
19 *establish specific guidelines, including the approximate frequency*
20 *of security testing, and standards for security and security testing.*

21 (d) *The regulations governing security shall require that each*
22 *electronic recording delivery system comply with all requirements*
23 *deemed by the Attorney General to be consistent with the public*
24 *interest in electronic recording delivery systems being as reliable*
25 *and secure as possible.*

26 (e) *The regulations shall also contain all of the following:*

27 (1) *A statement of a uniform definition of the term “source*
28 *code” consistent with this article and applicable to every*
29 *electronic recording delivery system throughout the State.*

30 (2) *The placement of an exact copy of each source code*
31 *associated with each approved electronic recording project in an*
32 *approved escrow facility prior to that system’s first use.*

33 (3) *A requirement that any modification to a source code held*
34 *in escrow that is associated with an approved electronic recording*
35 *delivery system be approved by the Attorney General.*

36 (4) *An expression of standardized policies and procedures for*
37 *the establishment and operation of approved escrow facilities.*

38 (5) *Establishment of baseline technological and procedural*
39 *specifications for electronic recording delivery systems.*

1 (f) Regulations may also provide for initial certification of
2 vendors offering software and other services to counties for
3 electronic recording delivery systems.

4 (g) The Attorney General shall monitor the security of
5 electronic recording delivery systems statewide, in close
6 cooperation with county recorders. In the event of an emergency
7 involving multiple fraudulent transactions linked to one county's
8 use of an electronic recording delivery system, the Attorney
9 General may order the suspension of electronic recording delivery
10 systems in any county or in multiple counties, if necessary to
11 protect the security of the system, for a period of up to seven
12 calendar days.

13 (h) The Attorney General or a district attorney may initiate an
14 action for declaratory or injunctive relief pertaining to any alleged
15 violation of this article or regulations adopted pursuant to this
16 article.

17 (i) An electronic recording delivery system shall be subject to
18 local inspection and review by the Attorney General. The Attorney
19 General shall furnish a statement of any relevant findings
20 associated with a local inspection to the county recorder of the
21 inspected electronic recording delivery system and to all
22 technology vendors associated with that system.

23 27398. (a) Subject to the approval of their respective boards
24 of supervisors, up to 12 counties may participate in an electronic
25 recording pilot project utilizing digital electronic records to record
26 real property documents.

27 (b) Except as set forth in this section, the requirements
28 contained in this article shall apply to an electronic recording pilot
29 project implemented under this section.

30 (c) The Attorney General may enact any additional regulations
31 necessary to ensure the security of a system based upon digital
32 electronic records, including regulations related to the acceptance
33 of a document containing an electronic signature or digital
34 notarization.

35 (d) The Attorney General shall conduct an evaluation of the
36 pilot projects and report to both houses of the Legislature on or
37 before June 30, 2007. The Legislature may, based on this
38 evaluation, consider whether the pilot project should be expanded
39 or extended, or limited or terminated.

1 (e) Subject to the requirements of this article, a pilot project
2 established under subdivision (a) that is in lawful operation on
3 June 30, 2007, may continue in operation until December 31,
4 2010.

5 (f) This section shall remain in effect only until January 1, 2011,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2011, deletes or extends that date.

8 27399. (a) Nothing in this article shall be construed to
9 authorize any public agency to intrude upon the autonomy or
10 business practices of the county recorders of the State of California
11 in any manner not specifically set forth in this article.

12 (b) If a district attorney or county counsel for a county
13 developing an electronic recording delivery system or the Attorney
14 General reasonably believes that a system operated pursuant to
15 this article has been compromised by fraud or intrusion, he or she
16 shall immediately take the necessary steps to alert the county
17 recorder to guard against any compromise of the system that may
18 result in the suspension of electronic recording.

19 27399.5. The authority granted in this article is in addition to
20 any other authority or obligation under California or federal law.
21 Nothing in this article shall be construed to repeal or affect Section
22 27279, 27279.1, 27279.2, or 27279.3.

